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No.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

TRAVIS WARD,
Petitioner
v.
SENTRY TITLE CO., INC.,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Supreme Court of the United States

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No.

TRAVIS WARD,
Petitioner

vs.

SENTRY TITLE CO., INC.
HOME ENGINEERING, INC. AND
ALAN D. WHATLEY,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the U. S. Court of Appeals for the Fifth Circuit in the above entitled case, entered September 26, 1983, and reaffirmed on March 12, 1984.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Fifth Circuit Court of Appeals violated equitable principles recognized by this Court and violated the *Erie* doctrine[1] in its opinion reversing the District Court's interpretation of substantive Texas law regarding constructive trusts?

2. Whether the Circuit Court violated well established judicial policy regarding appellate review and the Federal Rules of Civil Procedure[2], in reversing the District Court's decision without challenging material facts as clearly erroneous, in inferring material facts which are not in the record, and in sifting through evidence in an illogical sequence without proper inferences leading to *prima facie* validity of the Court's conclusions?

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[1]*Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1937).

[2]FedR.Civ. P. 52 (a), 28 U.S.C.

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TABLE OF AUTHORITIES

STATUTORY PROVISIONS

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is reported at 715 F.2d 941 (1983). The Court of Appeals rendered an additional opinion on Motions for Recall of Mandate. (Appendix A).

The Findings of Fact and Conclusions of Law of the United States District Court for the Northern District of Texas, Dallas Division, is not reported. (Appendix B).

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered on September 26, 1983. The Fifth Circuit's additional opinion on Motions For Recall of Mandate was issued on March 12, 1984.

Suggestions for rehearing en banc and motion for panel rehearing were denied on October 26, 1983. On November 16, 1983, the appellee's motion for stay of mandate was denied.

On January 21, 1984, and February 14, 1984, this Court granted extensions of time in which to file Petition for Certiorari.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATUTES INVOLVED

Rules of Decision Act, 28 U.S.C. §1652 (1976):

§1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply. June 25, 1948, c. 646, 62 Stat. 944.

Rule 52(a), Federal Rules of Civil Procedure, 28 U.S.C.:

RULE 52. Findings by the Court

(a) Effect

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and

state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

STATEMENT OF THE CASE

This appeal is an interpleader action to determine the proper distribution of proceeds from a foreclosure sale of real property. The case was removed from a Texas state district court to federal court when the I.R.S. asserted a claim against the proceeds, 28 U.S.C. §§1340, 1345, and remained there after the I.R.S. achieved satisfaction of its claims. The district court found it would be in the interest of justice to allow the case to remain in federal court rather than delay the litigation further by a remand to state court.[3]

Petitioner claims that the Respondent initially bought the property as his agent, and that Petitioner is therefore entitled to the proceeds in question herein.[4]

This case presents the question of whether an individual[5] having a fiduciary relationship with a business associate,[6] and who acquires property for the use and benefit of that associate, with that associate's funds, should be awarded with the proceeds of a foreclosure sale on that property, when that individual breached his fiduciary duty by asserting personal ownership of said property.[7] The District Court imposed a constructive trust in favor of Petitioner on the proceeds from the foreclosure sale of the property.

In July of 1970, Respondent purchased the Dyckman property[8] in the name of Home Engineering, Inc., which later conveyed

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[3] *Harris v. Sentry Title Company, Inc.*, 715 F.2d 941, 943, 945 (5th Cir. 1983). (hereinafter referred to as "Sentry Title Company")

[4] *See, e.g.*, Sentry Title Company, *supra* at 945; District Court Finding of Fact No. 24; District Court Conclusion of Law No. 7; Amended Proposed Findings of Fact and Conclusions of Law at Findings of Fact No. 7, 8, 9, 12 (Appendix C).

[5] Respondent.

[6] Petitioner.

[7] The facts asserted herein are based on none other than the unchallenged Findings of Fact of the District Court which were specifically accepted by the Court of Appeals. See generally, Opinions of Court of Appeals and Dissenting Opinions; District Court Findings of Fact and Conclusion of Law.

[8] The property which was ultimately sold at the foreclosure sale.

it to Sentry Title Company, Inc., entities both owned and controlled by Respondent. The property was purchased pursuant to an agreement with Petitioner Ward that Respondent would take and hold this particular property for the use and benefit of Petitioner. The relationship in agreeing to acquire the property on behalf of Petitioner was recognized by the District Court as constituting a fiduciary relationship. The Court of Appeals specifically accepted this finding of fact by the District Court. *Sentry Title Company, supra* at 948. Moreover, the Court of Appeals recognized that Petitioner controlled the actions taken on his behalf with respect to the property. *Id.* at 949.

The expenses incurred in the process of acquiring said property, as well as the $5,000.00 down payment consideration for purchase of said property, was provided by Petitioner Ward. Moreover, prior to Respondent's breach of his fiduciary duty to hold said property for Petitioner Ward, Respondent billed Petitioner for expenses associated with the property, as well as interest payments[9] pertinent to the financing of the property.

Finally, subsequent to being informed that Respondent intended to assert personal ownership in the property[10] and upon being informed that Respondent's bare legal title to said property was about to be terminated through a foreclosure sale and that Petitioner's rightful ownership might be usurped by a *bona fide* purchaser at said sale, Petitioner purchased said property to protect his equitable interest at the foreclosure sale.[11] Petitioner had to bid more than 800% over the face amount of the note in purchasing the property to protect his interest.

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[9]The only payments on the property prior to foreclosure were certain interest payments. See District Court Finding of Facts No. 27; Dissenting Opinion, 715 F.2d at 953. As will be discussed *infra*, Petitioner paid the outstanding principal and interest by purchasing the note prior to foreclosure.

[10]In April 1972, twenty-one months after acquisition of the property, Respondent for the first time advised Petitioner that he refused to recognize any longer Petitioner's equitable ownership of the property. Dissenting Opinion, 715 F.2d at 953.

[11]*Id.* at 954.

The proceeds of the foreclosure and alleged profits misappropriated to Respondent by the Court of Appeals are the focus of this action.

REASONS FOR GRANTING THE WRIT

1. The Decision of the Fifth Circuit is in conflict with applicable decisions of this Court as well as applicable decisions of the Supreme Court of Texas.

In respectfully appealing to the conscience of this Court to invoke the equitable remedies to which Petitioner is entitled, Petitioner's conviction to diligently litigate this matter has been fueled only by a determination to assert his equitable right to expect good faith and fair-dealing in business transactions, and by a determination to defend the time-honored Texas public policy that unfair dealing and unfaithful conduct should be redressed by broad and flexible equitable remedies.

Importantly, as discussed below, the Court of Appeals not only erred in misconstruing Texas law with respect to constructive trusts in violation of the *Erie* doctrine, but also departed from established judicial policy with respect to judicial review, and failed to recognize equitable principles previously enunciated by this Court.

As pertinent to the unchallenged facts in this case, this Court in *Robertson v. Chapman,*[12] specifically recognized the equitable standard that an agent acting in contravention of the duties owed to his principal "...becomes a *trustee* of the property improperly dealt with." (emphasis supplied) *Id.* at 681.

In fact, as related to Petitioner's equitable right to the proceeds generated by the foreclosure sale herein, Petitioner would note that the Court likewise held that the Respondent "...will be compelled to surrender it [the property], or, if he has disposed of it to a *bona fide* purchaser, to account not only for its real value, but for any profit realized by him on such resale." *Id.*

In recognizing that an agent must turn over to the principal the proceeds of the sale of property to which the principal is

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[12] 152 U.S. 673, 14 S. Ct. 741 (1893).

equitably entitled, the Court in *Robertson* reasoned as follows:

> He was precluded by the position voluntarily assumed by him from taking advantage of his principal, or from dealing with the property committed to his care in any other capacity than as an agent, who was bound to subordinate his own interests to those of his principal. He could not, directly or indirectly, become the purchaser and maintain any title thus acquired as against his principal, for, in so purchasing, his duty and his interest would come in conflict.
>
> ...
>
> The law will not permit him, without the knowledge or assent of his principal, to occupy a position in which he will be tempted not to do the best he may for the principal.

Id. at 681-682.

Accordingly, the Court of Appeals plainly erred in rewarding Respondent with the proceeds of the foreclosure sale. To allow Respondent to retain the proceeds is, very simply, to reward him for his breach of the fiduciary relationship existent with Petitioner.

Indeed, to allow Respondent to retain the proceeds in the instant case is even more egregious than the act referred to in *Robertson*, since the proceeds herein were paid in by Petitioner in an attempt to protect his equitable rights to the property.[13] *Sentry Title Co., Inc., supra,* Dissenting Opinion at 954. Under such circumstances it is clear that here, as in *Robertson*, equity requires that the proceeds from the sale be surrendered to Petitioner.

As previously stated, the Court of Appeals likewise violated the *Erie* doctrine. As the Court is aware, the decision in *Erie* made it clear that in the absence of a pertinent federal law, state law must govern in federal court, as mandated by the Rules of Decision Act, 28 U.S.C. §1652. (1976)

The rationale underlying *Erie* makes this proposition applicable

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[13] It is a well established maxim in equity, that one who is diligent in asserting his rights should be favored by courts sitting in equity matters. *Williams v. International Association of Machinists and Aerospace Workers*, 484 F.Supp. 917, 920 (S.D.Fla. 1979), cert. den. 449 U.S. 840.

to diversity and non-diversity suits, *Bernhardt v. Polygraphic Co.*, 350 U.S. 198, 200 (1956); Westen & Lehman, "Is There Life for *Erie* After the Death of Diversity?", 78 Mich. L. Rev. 311, 315-316 (1979), as well as to suits in equity. *Guaranty Trust Co. v. York*, 326 U.S. 99, 104 (1945). Were this not so, then a federal court would be able to "legislate" in substantive areas of state law under the guise of its decision-making authority. Such action by federal courts is clearly impermissible, there being no constitutional grant for such authority. *Hanna v. Plumer*, 380 U.S. 460, 471. (1965).

Disbursement of funds in an interpleader action is clearly governed by state law, the substantive issue being a determination of the rights of "rival claimants to a given fund." *Metropolitan Life Insurance Co. v. McCall*, 509 F.Supp. 439, 441 (W.D. Pa. 1981); *American Re-Insurance Co. v. Insurance Commission*, 527 F.Supp. 444, 450 (C.D. Calif. 1981). Thus, where substantive state law is the applicable law to be applied in federal court, this Court has recognized that it is the province of state courts to interpret and define the state law which federal courts are bound to apply. *Brady v. Maryland*, 373 U.S. 83, 90 (1963); *Huddleston v. Dwyer*, 322 U.S. 232, 236 (1944).

To adhere to these well-established judicial policies in the present case, serves to further the very concerns addressed in *Erie*. That is, it will promote a uniformity of decision whether the case is litigated in federal or state court. In addition, in the absence of a federal interest present to justify displacing applicable state law, there should be no impermissible encroachment by the federal judiciary into a clearly demarcated sphere of state judicial authority. *U.S. v. Little Lake Misere Land Co.*, 412 U.S. 580, 591 (1973); *Hanna v. Plumer*, 380 U.S. at 471; *Mason v. U.S.*, 260 U.S. 545, 558 (1923).

In the instant case, the Court of Appeals misapplied state law as defined by the highest courts in Texas.

In fact, the Court of Appeals misapplied Texas law in at least three different areas, any one of which would support a ruling in favor of Petitioner. In reversing the decision of the District Court the Court of Appeals misconstrued the Texas law of constructive trusts. Furthermore, the Court failed to realize that the

unchallenged facts in this matter support another form of constructive trust recognized in Texas law, a "technical fiduciary relationship", such as principal and agent. Finally, the unchallenged facts in this case clearly reflect the elements giving rise to a resulting trust.

The constructive trust doctrine is an equitable remedy which is not unique to Texas. As recognized by Justice Cardozo, "A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee."[14]

As emphasized by the Texas Supreme Court, "there is no unyielding formula to which a Court of equity is bound in decreeing a constructive trust, since the equity of the transaction will shape the measure of relief granted."[15]

Accordingly, the dissenting judge on the Court of Appeals panel correctly concluded that there are no set prerequisites for determining the recognition of a constructive trust.[16] Each case must therefore be carefully reviewed on its unique facts[17] to assure that complete justice is done.[18]

Finally, it is important to note that Texas law recognizes at least two independent forms of fiduciary relationships that can give rise to a constructive trust. The term fiduciary "includes those

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[14]*Beatty v. Guggenheim Exploration Co.*, 225 N.Y. 380, 122 N.E. 378, 380 (1919).

[15]*Meadows v. Bierschwale*, 516 S.W.2nd 125, 131 (Tex. 1974).

[16]*Sentry Title Co., Inc., supra* at 956. (Dissenting Opinion); See, *Gaines v. Hamman*, 358 S.W.2d 557, 560 (1962); *Omohundro v. Matthews*, 341 S.W.2d 401, 407-09 (1960); *Fitz-Gerald v. Hull*, 237 S.W.2d 256, 260-62 (1951).

[17]*Gaines v. Hamman, supra*, at 561.

[18]*Pierce v. Sheldon Petroleum Co.*, 589 S.W. 2d 849, 852 (Tex. Civ. App.-Amarillo 1979).

'*informal* relations' which exist whenever one party trusts and relies upon another, as well as *technical* fiduciary relations."[19]

Technical fiduciary relationships include such relationships as ". . . attorney-client or *principal-agent.*" [emphasis supplied].[20]

Where there is no technical fiduciary relationship existent regarding the transaction in question sufficient to give rise to recognition of a constructive trust, the Texas courts have looked to prior existing relationships to determine if there are sufficient factors warranting imposition of a constructive trust.[21]

An examination of the rationale of the Court of Appeals opinions in reversing the District Court plainly demonstrates that the Court misapplied Texas state law construing the imposition of constructive trusts.

At the outset, contrary to the well-established Texas law holding that the constructive trust remedy is a broad and flexible equitable remedy with no "unyielding formula" or "prerequisites" for its application, the Court of Appeals asserted two prerequisites for application of the equitable remedy. The Court of Appeals held that the first prerequisite is a "critical requirement" that there is a ". . . prior, unrelated history of close and trusted dealings of the same general nature or scope as the subject transactions."[22] The Court of Appeals held that the second prerequisite ". . . is a finding that unjust enrichment would result if the remedy of constructive trust were not imposed."[23]

To the contrary, there is not ". . . a single Texas decision that applies the two-prong test for constructive trust" which the Court of Appeals applied in this case.[24] As pertinent to the Court of

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[19] *Texas Bank & Trust Co., v. Moore*, 595 S.W. 2d 502, 507 (Tex. 1980).

[20] See, e.g. *Fitz-Gerald v. Hull, supra; Schiller v. Elick*, 240 S.W.2d 997 (Tex. 1951).; See also *Sentry Title Co., Inc.*, Dissenting Opinion, *supra* at 956).

[21] *Gaines v. Hamman, supra* at 561; *Thigpen v. Locke*, 363 S.W.2d 247, 253, (Tex. 1962); *Fitz-Gerald v. Hull, supra*, at 261.; See *Sentry Title Co., Inc.*, Dissenting Opinion, *supra* at 956 (citing *Consolidated Gas & Equipment Co. v. Thompson*, 405 S.W.2d 333 (Tex. 1966).

[22] *Sentry Title Co., Inc., supra* at 946, 948.

[23] *Id.* at 948.

[24] *Id.* Dissenting Opinion at 956.

Appeals' "critical requirement" that there must be a *prior* fiduciary relationship we would note that Texas law expressly recognizes technical fiduciary relationships, such as the principal-agent relationship in the Dyckman transaction in issue.[25] Likewise, there are no Texas decisions citing unjust enrichment as an absolute prerequisite to the imposition of constructive trusts.[26]

Apart from the Court of Appeals error in asserting a two-prong test, the Court even misapplied Texas law in its interpretation of those Texas cases reviewing prior relationships in the absence of formal or technical fiduciary relationships concerning the transaction in issue.[27] For example, the Court of Appeals clearly erred by holding that a prior relationship "as a matter of law" must be a ". . . long-standing fiduciary or confidential, trusting relationship unrelated to the subject transaction."[28]

Even the Court of Appeals, in its second opinion dated March 12, 1984 is attempting to retreat from its erroneous ruling by stating that the Court did not place primary emphasis on this requirement. Importantly, however, the Court of Appeals, nevertheless, affirmed the prior decision as controlling in this matter.

As asserted by the Dissenting Judge, the Court's explanation in its second opinion is not convincing, as the original opinion plainly includes "long-standing" as a requirement for imposing constructive trusts where there are prior fiduciary relationships.[29] We would further point out that the Court's assertion in the second opinion stating that its summary of its ruling does not include the "long-standing requirement" is misleading, since the discussion of "prior history of unrelated dealings" begins immediately thereafter with the long-standing requirement.[30]

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[25] *Id.* at 956.

[26] *Id.* at 957.

[27] *Id.* at 956.

[28] See, *Bocanegra v. Aetna Life Ins. Co.*, 605 S.W.2d 848, 851 (Tex. 1980); *Edwards v. Strong*, 213 S.W.2d 979 (Tex. 1948)

[29] As noted by the Dissenting Judge, the headnotes published by West Federal Digest clearly reflect the "long-standing" requirement.

[30] *Sentry Title Co., Inc., supra* at 948.

Additionally, the Court of Appeals misapplied Texas law in reviewing whether there are sufficient prior fiduciary relationships to impose constructive trusts, when it interpreted Texas law as requiring that the prior relationships must have been "separate" from the subject transaction, yet "within the scope of the parties' prior dealings."[31] As discussed further below, such an interpretation is clearly illogical, since it includes mutually exclusive concepts. In fact, an attempt to apply such an interpretation would result in obliteration of the concept of recognizing informal constructive trusts when there have been sufficient prior dealings of the same scope and nature as the subject transaction.

The Court of Appeals in holding "unjust enrichment" as a prerequisite even misapplied Texas law on "unjust enrichment". In an unwarranted and improper inference completely unsupported in the record, the Court inferred that Petitioner had "unclean hands" precluding him from equitable relief. *Sentry Title Co., Inc., supra* at 950. While the record is totally devoid of any evidence regarding alleged unclean hands by Petitioner, the Court misapplied the Texas law of "unjust enrichment."

The cases decided in Texas clearly indicate that the conduct claimed to "soil the hands" of a plaintiff must affect the equitable relations between the parties to the litigation.[32] Importantly, the conduct of the party seeking equitable relief as to third parties is simply not to be considered in evaluating the "clean hands" of the plaintiff.[33] Under Texas law the clean hands doctrine is not to be applied to deny a plaintiff relief where the defendant has not been harmed by the conduct.[34]

As discussed below, there are no facts before this Court which would indicate that any conduct of Petitioner adversely affected Respondent. In fact, it is uncontested that Petitioner performed every promise made in favor of Respondent. Likewise, as discuss-

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[31] *Id.*, Second Dissenting Opinion at 12.

[32] *Office Employers' International Union v. Houston Lighting and Power Company*, 314 S.W.2d 315, 325 (Tex. Civ. App, 1958).

[33] *Hellyer v. Wig Imports, Inc. of the Southwest*, 458 S.W.2d 492, 495 (Tex. Civ. App, 1970).

[34] *Rodgers v. Tracy*, 242 S.W.2d 900, 905 (Tex. Civ. App. 1951).

ed further below, the record is totally devoid of any facts or challenges asserting that Petitioner had unclean hands. Finally, Petitioner's action which the Court considered to be "unclean" was merely Petitioner's anonymity in bidding on certain pieces of property other than the transaction in issue. Such action in no way affected Respondent, and as affirmed by the *amicus* parties herein, is a practice commonly accepted in honest business transactions.

The Court of Appeals has erred in claiming that the Dyckman transaction came within the scope of the Texas Trust Act[38] and that any equitable remedy was therefore defeated by the Statute of Frauds. To the contrary, as the Court of Appeals itself acknowledged in *Palmer v. Fuqua*, 641 F.2d 1146, 1159 (5th Cir. 1981), "[t]he imposition of a constructive trust is not prevented by the Statute of Frauds, the Statute of Conveyances, or the Texas Trust Act."

The Court of Appeals mistakenly characterized the transaction in issue as ". . . an oral trust to convey real property", thereby concluding that the transaction fell within the Texas Trust Act. *Sentry Title Co., Inc., supra* at 949. Importantly, however, the unchallenged facts specifically accepted by the Court of Appeals are clear evidence that the operative agreement between Petitioner and Respondent was an agreement to perform services in the acquisition of the property on behalf of Petitioner. *Id.* at 949. Thus, as opposed to constituting an oral trust to convey real property, the transaction in issue was merely a principal-agent relationship.

In misapplying the above areas of substantive state law with respect to constructive trusts, the Court of Appeals has caused substantial confusion and concern in an area involving extremely important Texas public policy. In fact, the real estate industry as well as the oil industry have filed *amicus*[39] briefs expressing grave concern that the effect of the Court of Appeals decision will narrow and frustrate a previously flexible equitable remedy

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[38]Tex. Rev. Civ. Stat. Ann., art. 7425b-7.

[39]Amicus briefs were filed by Greater Dallas Board of Realtors®, Inc. and Texas Independent Producers and Royalty Owners Association.

to the point that it is both unworkable and overly restrictive. Moreover, they have expressed serious concern that the current opinion converts the Texas constructive trust doctrine from a flexible remedy balancing many factors into one with defined and compartmentalized "elements." They concluded that such reasoning will in some instances lead to overapplication, and in other instances to underapplication of the doctrines, and will interfere with the public policy of Texas.

The substantial interest and concern asserted by the *amicus* parties plainly demonstrates the far-reaching implications of the Court of Appeals decision, and the likelihood of confusion and reoccurence of this issue of important Texas public policy.

Even aside from the Court of Appeals misapplication of Texas law governing prior "informal relationships" giving rise to constructive trusts, there are undisputed and accepted factual findings in the Court of Appeals decision, as well as the record, supporting a "technical fiduciary relationship." As previously stated, a "technical fiduciary relationship" can arise through transactions conducted in a principal-agent relationship.

Importantly, the unchallenged and specifically accepted factual findings of the District Court plainly support the elements prerequisite to finding a principal-agent relationship, thereby giving rise under Texas law to appropriate recognition of a constructive trust in the form of a technical fiduciary relationship.

Agency status arises from the parties' intention that the agent be "authorized to act for and on behalf of the principal" subject to the principal's control. *Lubbock Feed Lots, Inc. v. Iowa Beef Processors, Inc.* 630 F.2d 250, 269 (5th Cir. 1980). Furthermore, intent may be inferred from the conduct of the parties to a transaction. *Texas Processed Plastics, Inc. v. Gray Enterprises,* 592 S.W.2d 412, 416 (Tex. Civ. App. 1979); *Irwin v. Irwin,* 300 S.W.2d 199, 203 (Tex. Civ. App. 1957).

As pertinent to the instant suit, the unchallenged and accepted findings substantiate that acquisition of the Dyckman property was made pursuant to an agreement between Petitioner and Respondent that Respondent would take and hold title to the property on behalf of Petitioner. *Sentry Title Co., Inc., supra* at 949. Moreover, the Court of Appeals recognized that the deter-

minative element of "control" establishing the agency status was satisfied when it acknowledged that Petitioner "was calling the shots" with respect to acquisition of the property. *Id.* at 949.

Accordingly, there can be no doubt that requisite elements sufficient to establish a principal-agent relationship exist in this case to support imposition of a constructive trust.

In addition to the above errors committed by the Court of Appeals in its decision regarding constructive trusts, the Court erred in failing to impose a *resulting trust*. The undisputed and unchallenged facts herein plainly demonstrate that the determinative elements giving rise to a resulting trust are present in the record.

Moreover, contrary to the Court of Appeals' assertion that "the issue of resulting trust is not raised by any party", *Sentry Title Co., Inc., supra* at 956, Petitioner clearly pled and proved the theory of resulting trust as an alternative ground of recovery. First Amended Answer and Claim of Defendant Travis Ward, at No. 23, Appendix D; Amended Proposed Findings of Fact and Conclusions of Law of Defendant Travis Ward at Conclusion of Law No. 3, Findings of Fact Nos. 7, 8, 9, Appendix C. Despite Petitioner's request that appropriate findings be made as to a resulting trust, the trial court found it unnecessary to address this issue, relying instead on the theory of constructive trust.

As pertinent to the fact that the District Court ruled in Petitioner's favor on the constructive trust claim as opposed to the resulting trust claims, the law is well-settled that where the decision rendered by the district court is correct, the Court of Appeals must affirm the decision even if the lower court relied on the wrong ground or gave a wrong reason. *S.E.C. v. Chenery Corporation*, 318 U.S. 80, 88 (1943); *Helvering v. Gowran*, 302 U.S. 238, 245 (1937); *Stegmaier v. Trammell*, 597 F.2d 1027, 1038 (5th Cir. 1979); *Standefer v. U.S.*, 511 F.2d 101, 104 (5th Cir. 1975).

"A resulting trust arises by operation of law when title is conveyed to one person but the purchase price or a portion thereof is paid by another." *Cohrs v. Scott*, 338 S.W.2d 127, 130 (Tex. 1960); *Olcott v. Bynum*, 84 U.S. 44, 59 (1873). The parties are presumed to intend that the equitable title follows the considera-

tion. *Bybee v. Bybee*, 644 S.W.2d 218, 221 (Tex. App. 1982); *Cohrs v. Scott, supra* at 130.

As pertinent to the transaction in issue herein, the Court of Appeals failed to recognize that the unchallenged findings of facts it specifically accepted likewise support the *prima facie* standards for resulting trust enunciated in its very own opinion. The Court set out the standards for imposition of a resulting trust as follows:

> A resulting trust is an actual, binding trust that can develop where the parties intended a confidential or fiduciary relationship to develop and acted accordingly, but failed to create a valid actual trust agreement. A resulting trust can occur, for example, where one party buys real property with the funds of another with the understanding that the property is being held for the party that provided the money.

Sentry Title Co., Inc., supra at 946.

In specifically accepting the factual findings necessary to support a resulting trust, the Court of Appeals later in its opinion found as follows:

> We accept, nonetheless, the finding of the district court that there was an oral contract under which Whatley would hold the title to the Dyckman tract on behalf of Ward ... Even adding the additional finding of the district court that there was a fiduciary relationship between the two, we conclude that the duty to transfer the property is still unenforceable...

Id. at 949.

Accordingly, for the reasons stated herein, the decision of the Fifth Circuit Court of Appeals is in conflict with applicable decisions of this Court as well as applicable decisions of the Supreme Court of Texas.

2. The Decision of the Fifth Circuit violates well-established judicial policy regarding appellate review and the Federal Rules of Civil Procedure.

A review of the Court of Appeals decision plainly indicates that the Court violated well-established judicial policy regarding appellate review and the Federal Rules of Civil Procedure, in

reversing the District Court's decision without challenging material facts as clearly erroneous, in inferring material facts which are not in the record, and in sifting through evidence in an illogical sequence without proper inferences leading to *prima facie* validity of its conclusions.

The Court of Appeals was bound by Rule 52(a) of the Federal Rules of Civil Procedure to apply the "clearly erroneous" standard and afford appropriate deference to the findings made below. Even though the court was not bound by the District Court's findings, the law is well-settled that findings should not be disturbed unless shown to be unsupported by substantial evidence in the record. *U. S. v. Gypsum Company*, 333 U.S. 364, 395, (1948). Application of Rule 52(a) essentially requires that to overrule the trier of facts who is "usually in a superior position to appraise and weigh the evidence" *Id.*, the Court of Appeals must be left with "the definite and firm conviction that a mistake has been committed." *Zenith Corporation v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969)

As relevant to these proceedings, it is important to note that contrary to holding the findings determinative of the issues herein as "clearly erroneous", the Court of Appeals specifically accepted material facts which support a *prima facie* case for Petitioner. Moreover, the Court of Appeals left unchallenged, numerous other determinative factual findings. *Sentry Title Co., Inc., supra*, Dissenting Opinion.

As previously discused, the record below is replete with evidence supporting imposition of either a constructive or resulting trust on behalf of Petitioner. Having accepted these findings without challenge, reversal was outside the scope of Rule 52(a).

Furthermore, the Court of Appeals plainly departed from well-established judicial policy by inferring facts which the Court considered to be material to its decision.

As previously discussed, the Court misapplied Texas law by asserting a two-prong test for the imposition of constructive trusts, which included a prerequisite that Petitioner establish "unjust enrichment". While the unchallenged facts of this case clearly indicate that Respondent is being handsomely enriched for the

breach of his fiduciary relationship with Petitioner[37], the Court nevertheless concluded that Respondent had not been unjustly enriched.

Importantly, in the course of arriving at the above conclusion, the Court of Appeals inferred facts material to its conclusion which are not in the record and which have never been asserted by any party. While the record is totally devoid of any evidence regarding alleged "unclean hands" by Petitioner, the Court repeatedly makes such inferences in concluding that Petitioner is not equitably entitled to the proceeds herein.

The unsupported and unwarranted inferences of the Court of Appeals clearly demonstrate that the Court departed from accepted judicial policy for appellate review.

> The days are long since past when appellate courts in the federal system in equity cases reviewed findings of fact *de novo*. The scope of appellate review is more sharply limited even in causes that would have been formerly classed as proceedings in equity. The findings of the trial court must be clearly erroneous or they will not be set aside. *Chris-Craft Industries Inc. v. Piper Aircraft Corp.*, 480 F.2d 341, 393 (2nd Cir. 1973); See, *Zenith Corp. v. Hazeltine*, 395 U.S. at 123; *Wertz v. National City Bank of Evansville, Ind.*, 115 F.2d 65, 68 (7th Cir. 1940).

Finally, a review of the Court of Appeals decision in light of the numerous accepted and unchallenged determinative factual findings herein, as well as the numerous interpretations of Texas state law which do not apply logically compatible standards, clearly demonstrates an opinion incapable of supporting a *prima facie* valid conclusion.

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[37] *Sentry Title Co., Inc., supra* at 930.

CONCLUSION

In the interest of justice and in promoting good faith and fair dealing in business transactions, Petitioner Ward respectfully requests the equitable relief to which he is plainly entitled under Texas law as well as previous decisions of this Court.

For the reasons stated herein, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Hiram C. Eastland, Jr., one of the attorneys for Petitioner herein, am a member of the bar of the Supreme Court of the United States, hereby certify that on the 24th day of March, 1984, I served copies of Petitioner's foregoing Petition for a Writ of Certiorari on the several parties hereto by mailing three copies of said document by United States mail, in duly addressed envelopes, with postage prepaid, to each of the following persons:

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   Royalty Owners Association.

I further certify that all parties required to be served have been served.

Hiram C. Eastland, JR.

Hiram C. Eastland, Jr.